United States Court of Appeals

for the Second Circuit

APPENDIX

76-1037

B
P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

UNITED STATES OF AMERICA

Appellee

-against-

SOLOMON BROVERMAN

Appellant

----------X

Docket No. 76-1037

APPENDIX

JOSEPH J. LOMBARDO
Attorney for Appellant
Office & P.O. Address
16 Court Street
Brooklyn, New York 11201

INDEX TO APPENDIX

D. C. Form No. 100
CRIMINAL DOCKET

75CK 280 75 12 17 PLATT, J. 1

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: Levin-Epstein
vs.	
SOLOMON BROVERMAN,	
LAWRENCE CESARE,	
WALLACE CASCIO and	
EUGENE SANTORE also known as "Chatch"	For Defendant: SANTORE
	Peter A. Passalacqua 32 Court St- B;klyn N.Y. 11201 852-[illegible]

Theft of goods in i.c.c.

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED				
			DATE	NAME	RECEIVED	DISBURSED	
Fine,							
Clerk,							
Marshal,							
Attorney,							
Commissioner's Court,							
Witnesses,							

DATE	PROCEEDINGS
-8-75	Before Weinstein J - Indictment filed
4-15-75	Petition for Writ of Habeas Corpus Ad Prosequendum filed.
4-15-75	By PLATT, J - Writ issued, ret. 4-25-75
4/25/75	Before PLATT,J.- Case called- Defts present without counsel-Each deft arraigned and the Court enters a plea of not guilty on behalf of each deft-Case adjd to 5/23/75- Bail set at $50,000.00 surety bond as to deft Cesare- bail set at $5000.00 P.R. Bond as to deft Broverman,Cascio and Santore
4/25/75	By PLATT,J.- Order appointing counsel filed(SANTORE)
4-29-75	Writ retd and filed - Executed. (CESARE)
/23/75	Notice of Motion, ret. 5/23/75 filed re: to inspect Grand Jury Minutes,etc
/23/75	Deft's Points and Authorities filed.

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DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
5/23/75	Before PLATT,J.- Case called- Defts and counsel present- case adjd to		
	7/11/75 to set trial date		
-28-75	Govts Notice of Readiness for Trial filed. (all defts)		
/29/75	Affidavit in opposition to deft's motion for discovery filed		

RJD:EL-E:sm
F. #751,401

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

SOLOMON BROVERMAN,
LAWRENCE CESARE,
WALLACE CASCIO and
EUGENE SANTORE, also known as
"Chatch",

Defendants.

- - - - - - - - - - - - - - - - - - X

75CR 280

INDICTMENT

Cr. No. _____
(T. 18, U.S.C., §659, §371 and §2)

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 7th day of March 1972, within the Eastern District of New York, the defendants SOLOMON BROVERMAN, LAWRENCE CESARE, WALLACE CASCIO and EUGENE SANTORE, also known as "Chatch", did wilfully and unlawfully receive and have in their possession a quantity of women's knitted garments, having a value in excess of One Hundred Dollars ($100.00), which goods had been stolen on or about March 3, 1972 from a motortruck belonging to the Arline Knitwear Company, Brooklyn, New York, while moving as a part of and constituting an interstate shipment of freight from New York to New Jersey, the defendants SOLOMON BROVERMAN, LAWRENCE CESARE, WALLACE CASCIO and EUGENE SANTORE, also known as "Chatch", knowing the same to have been stolen. (Title 18, United States Code, Section 659 and Section 2).

COUNT TWO

On or about and between the 6th day of March 1972 and the 7th day of March 1972, both dates being approximate and inclusive, within the Eastern District of New York, the defendants SOLOMON BROVERMAN, LAWRENCE CESARE, WALLACE CASCIO

and the defendant EUGENE SANTORE, also known as "Chatch", along with others known and unknown to the Grand Jury, did knowingly and wilfully conspire to commit an offense against the United States, in violation of Title 18, United States Code, Section 659, by conspiring to knowingly and wilfully receive and have in their possession a quantity of women's knitted garments having a value in excess of One Hundred Dollars ($100.00), which garments had been stolen on or about March 3, 1972 from a motor-truck belonging to the Arline Knitwear Company, Brooklyn, New York, while they were moving as and constituting an interstate shipment of freight from New York to New Jersey, the defendants SOLOMON BROVERMAN, LAWRENCE CESARE, WALLACE CASCIO and EUGENE SANTORE, also known as "Chatch" knowing them to have been stolen.

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendants SOLOMON BROVERMAN, LAWRENCE CESARE, WALLACE CASCIO and EUGENE SANTORE, also known as "Chatch", committed among others the following:

OVERT ACTS

1. On or about March 6, 1972, within the Eastern District of New York, the defendants EUGENE SANTORE, also known as "Chatch", and LAWRENCE CESARE met in Queens, New York.

2. On or about March 7, 1972, within the Eastern District of New York, the defendants SOLOMON BROVERMAN, LAWRENCE CESARE, WALLACE CASCIO and EUGENE SANTORE, also known as "Chatch", met in Brooklyn, New York. (Title 18, United States Code, Section 371).

A TRUE BILL.

Francina Willis

David G. Trager

UNITED STATES ATTORNEY
Eastern District of New York

wool over your eyes. Show them that you will not permit yourselves to be misled. And more important, show these men that you will not permit them to mislead you. Show the defendants that you will not permit them to insult your intelligence. Show these defendants that you will not be forced to throw your logical and common sense out of the window into the trash. Show them that you will not be fooled. Show them by doing your duty as honest jurors and find them guilty on all counts. Thank you.

THE COURT: Ladies and gentlemen, we are going to take a short recess. I have asked the marshalls to come up and take your luncheon orders. And the alternate jurors may also have lunch with you, or should you be through about 1:00, the alternates can either eat their lunches with you in the witness room, or, of course, if you don't wish to order you may go about your business after you are discharged. But the other jurors should give the luncheon order to the marshall as soon as I have charged you on the law.

Do not discuss the case.

(Whereupon there was a short recess.)

THE COURT: Ladies and gentlemen of the jury, I am going to give you instructions on the law

apropos to this case. Unfortunately, for you, but perhaps fortunate for the people who will have to, if they ever have to read or review my charge, I read the charge to you. This will minimize the risk of errors, and I think it may be more comprehensive to you. But it does require that you pay particular attention as it is very hard to follow. It will last probably close to fourty five minutes. It is going to require a fairly concentrated effort on your behalf and on your part. Now, if my voice starts to fall and any of you cannot hear any portion of it, please, let me know because I do want you to hear all of it.

MR. LOMBARDO: May we do the same thing, Your Honor.

THE COURT: You may take advantage of this too. You may move your chairs closer to me.

Now that you have heard the evidence and the arguments, it becomes my duty to give the instructions of the court as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the court, and to apply the rules of law, so given to the

fact as you find them from the evidence in the case.

You are not to single out one instruction alone as stating the law, but must consider the instructions, as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by the court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but evidence in the case.

You must not permit yourselves to be governed by sympathy, bias, prejudice or any other considerations not founded on evidence and these instructions on the law.

Justice through trial by jury must always depend on the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law as given in the instructions of the court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the " not-guilty" pleas of the accused. You are to perform this duty without bias or prejudice as to any party. Again, the law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Both the accused and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the court and reach a just verdict, regardless of the consequences.

I am not sending the exhibits which have been received in evidence with you as you retire for your deliberations. You are entitled, however, to see any or all of these exhibits as you consider your verdict. I suggest that you begin your deliberations and then, if it would be helpful to you, you may ask for any or all of the exhibits, simply by sending a note to me through one of the deputy marshalls who will be standing outside your door.

An indictment is but a form or method of accusing a defendant of a crime. It is not evidence of any kind against the accused.

There are two types of evidence from which a

jury may properly find a defendant guilty of a crime. One is direct evidence -- such as the testimony of an eye witness. The other is circumstantial evidence -- the proof of facts and circumstances which rationally implies the existence or non existence of other facts because such other facts usually follow according to the common experience of mankind. Thus, the foot print of a man in the sand implied to Robinson Crusoe there was another man with him on the desert island and indeed there was, the man Friday. Thus, on the one hand you may have direct evidence on the issue and on the other hand you may have circumstantial evidence of the issue. The law does not hold that one type of evidence is necessarily of better quality than the other. The law requires that the government prove it's case beyond a reasonable doubt both on the direct and the circumstantial evidence. At times the jury might feel that circumstantial evidence is a better quality. At other times they may feel direct evidence is of better quality. That judgement is left entirely to you.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a

defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

The law presumes the defendants to be innocent of crime. Thus a defendant, although accused begins the trial with a "clean slate"--with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant; for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt does not mean a doubt arbitrarily and capriciously asserted by a jury because of his or her reluctance to perform an unpleasant task. It does not mean a doubt arising

from the natural sympathy which we all have for others. It is necessary for the government to prove the guilt of the defendant beyond all possible doubt. Because if that weren't the rule, very few people would ever be convicted. It is practically impossible for a person to be absolutely sure and convinced of any contraverted fact which, by it's nature, is not susceptible of mathematical certainty. In consequence the law says that a doubt should be reasonable doubt, not a possible doubt.

A reasonable doubt is a doubt based upon reason and common sense, the kind of doubt that would make a reasonable person to hesitate to act. Proof beyond a reasonable doubt must therefore be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

The jury will remember that a defendant is never to be convicted on mere suspicion or conjecture.

Again, a reasonable doubt that is based on reason and must be substantiated rather than speculative and must be sufficient to cause a prudent person to hesitate to act in the most important affairs of his or her life.

The requirement of proof beyond a reasonable doubt rests on the whole case and not on separate bits of evidence. Each individual item of evidence need not be proven beyond a reasonable doubt.

The indictment in this case contains two counts, each count charges a separate crime. They must each be considered separately.

The indictment names three defendants in all. They are the only persons whose guilt or innocence you must announce in your verdict, although, as I will explain to you shortly, in considering their guilt or innocence, you may have to determine the nature of the participation, if any, of the others. In the determination of innocence or guilt, you must bear in mind that the guilt is personal. The guilt or innocence of a defendant on trial before you must be determined separately with respect to him solely on the evidence presented against him or the lack of evidence. The case of each defendant stands or falls upon the proof or lack of proof of the charge against him, and not against somebody else.

Now, the charge in Count One of the indictment is that on or about the 7th day of March 1972, within the Eastern District of New York, the

defendants SOLOMON BROVERMAN, WALLACE CASCIO, and EUGENE SANTORE, also known as "Chatch", did wilfully and unlawfully receive and have in their possession a quantity of woman's knitted garments, having a value in excess of One Hundred Dollars ($100.00), which goods had been stolen on or about March 3, 1972 from a motortruck belonging to the Arline Knitwear Company, Brooklyn, New York, while moving as a part of and constituting an interstate shipment of freight from New York to New Jersey, the defendants SOLOMON BROVERMAN, WALLACE CASCIO and EUGENE SANTORE, also known as "Chatch", knowing the same to have been stolen. (Title 18, United States Code, Section 659 and Section 2).

Now, Section 659 of the United States Code alleged to have been violated reads in pertinent parts:

" Whoever steals, or unlawfully takes, or carries away, or by fraud or deception obtains from any motor-truck or any other vehicle with intent to convert to his own use any goods or chattels moving as or which are a part or which constitute an interstate or foreign shipment of freight, express or other property of

" Whoever buys or receives or has in his possession any such goods or chattels, knowing the same to have been stolen shall be in violation of the law.

Section 2 of Title 18 of the United States Code which Section is also cited in Count One, provides that:

" Whosever commits an offense against the United States or aids, abbets or counsels, commands, induces, or procures it's commission is punishable as a principal.

" Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal."

The essential elements of the crime charged which must be proven beyond a reasonable doubt are as follows:

One that the accused had the goods or merchandise in his or their possession;

Two that such goods or marchandise exceeded in value one hundred dollars;

Three that such possession was done knowingly and intentionally;

Four that such merchandise had been stolen or unlawfully taken or carried away from a motor truck while the merchandise was moving as or a part or constituted an interstate or foreign shipment of freight, express or other property; and five that

the accused knew such merchandise to have been stolen.

It is not necessary that the accused knew that the goods or merchandise had been taken from a motor truck while the goods or merchandise were moving as part of the interstate shipment. It is necessary only that the proof show that the accused knew that the merchandise had been stolen.

Now, there is no question with respect to the second element of the crime that such goods or merchandise exceeded in value of one hundred dollars.

And there is no question with respect to the fact that the merchandise was moving as part of an interstate shipment of the freight at the time that the merchandise was allegedly stolen.

And, indeed, as best you can gather from the summation from the counsel there does not seem to be any dispute with respect to the fact that the goods were stolen from the shipment of Arline Knit Wear Co. So the sole questions you are concerned with here are one and five, that the accused had the goods or merchandise in his or their possession; and five that the accused knew such merchandise to have been stolen.

With respect to the question of possession, the law recognizes two kinds of possession. A

person who knowingly has direct physical control over a thing at a given time, is then in actual possession of it.

A person who, although is not in actual possession, knowingly has both the power and intent at a given time to exercise dominion or control over a thing, either directly or through another person or persons is then in constructive possession of it.

The law recognizes that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Possession of property recently stolen, not satisfactorily explained, is ordinarily a circumstance from which the jury may reasonably, but it is not required to draw the inference and find, in light of surrounding circumstances, shown by the evidence in the case, that the person in possession knew the property had been stolen.

Ordinarily, the same inferences may reasonably be drawn from a false explanation of possession of recently stolen property.

The term "recently" is a relative term and has no fixed meaning. Whether the property may be considered as recently stolen depends upon the nature of the property, and all the facts and circumstances shown by the evidence in the case.

In considering whether possession of recently-stolen property has been satisfactorily explained, you are reminded that, in the exercise of Constitutional rights, the accused need not take the witness stand and testify.

There may be opportunities to explain possession by showing other facts and circumstances, independent of the testimony of a defendant.

You will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

It is the exclusive province of the jury to determine whether the facts and circumstances shown by the evidence in the case warrant any inference which the law permits you to draw from possession of stolen property.

If you find beyond a reasonable doubt from the evidence in the case that the merchandise described in the indictment was stolen from the

goods or chattels which constituted interstate commerce and that recently stolen property was in the possession of the accused, you may, but need not, from these facts, draw the inference that the merchandise was purchased, received, or in the possession of the accused, as the case may be, with the knowledge that the merchandise was unlawfully stolen unless possession of the recently stolen property by the accused is explained to the satisfaction of the jury or by other facts and evidence in the case.

Again, it is the exclusive province of the jury to determine whether the facts and circumstances shown by the evidence in the case warrant any inference which the law permits you to draw from possession of recently stolen property.

One of the elements of the crime charged in each count of the indictment is that a defendant knew that the merchandise he possessed was unlawfully stolen. And I have already instructed you, that must be proven beyond a reasonable doubt.

Knowledge is something that you cannot see with the eye or touch with the finger. It is seldom possible to prove it by direct evidence.

The government relies largely upon circumstantial evidence in this case to establish knowledge.

In deciding whether the accused knew the merchandise was stolen, you must consider all the circumstances such as how the accused handled the transaction, how he or they conducted himself or themselves. Do his or their actions betray guilty knowledge that he or they were dealing with stolen merchandise, or are his or their actions those of an innocent man or men.

Guilty knowledge cannot be established by demonstrating mere negligence or even foolishness on the part of the accused.

Knowledge that the goods may be stolen may be inferred from the circumstances that would convince a man of ordinary intelligence that this is the fact. The element of knowledge may be satisfied by proof that an accused deliberatly closed his eyes to what otherwise would have been obvious to him.

Thus, if you find that the accused acted with reckless disregard of whether the merchandise was stolen, and with a conscious purpose to avoid learning the truth, the requirements of knowledge would be satisfied unless the accused actually

believed they were not stolen.

In this connection you should scrutinize the entire conduct of the accused at or near the time the offenses were alleged to have been committed.

If the evidence in this case indicates that a defendant had conspired with persons engaged in crime, as I will hereinafter define for you, or aids and abets them in their plans and purposese, an inference of guilty knowledge can be drawn.

The law assumes every man to intend the natural consequences which one standing in his circumstances and possessing his knowledge would reasonably expect to result from his acts.

Now, on this question of aiding and abetting, I will read to you Section 2 of Title 18 of the United States Code, it provides that

"Whoever committs an offense against the United States, or aids, abetts, counsels, commands, induces or procures its commission is punishable as a principal."

"Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

The guilt of a defendant may be established without proof that the accused personally did every

act constituting the offense charged.

In other words, every person who willfully participates in the commission of a crime may be found guilty of that offense. Participation is willfull if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with a specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

In order to aid and abet another to commit a crime it is necessary that the accused willfully associated himself in some way with the crime venture, and willfully participated in it as he would in something he wishes to bring about; that is to say, that he willfully seek by some act or omission of his to make the criminal venture succeed.

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

You of course may not find the defendants guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendants participated in its commission.

Mere presence at the scene of the crime and knowledge that a crime is being committed is not sufficient to establish that a defendant aided, and abetted the crime, unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

Guilt may not be inferred from mere association with a guilty party.

Now, Count Two of the indictment which is the conspiracy count reads as follows:

" On or about and between the 6th day of March 1972, and the 7th day of March 1972, both dates being approximate and inclusive, within the Eastern District of New York, the defendants SOLOMON BROVERMAN, WALLACE CASCIO, and EUGENE SANTORE, also known as Chatch", along with others known and unknown to the Grand Jury, did knowingly and wilfully conspire to commit an offense against the United States, in violation of Title 18, United

States Code, Section 659, by conspiring to knowingly and wilfully receive and have in their possession a quantity of women's knitted garments having a value in excess of One Hundred Dollars ($100.00), which garments had been stolen on or about March 3, 1972 from a motortruck belonging to the Arline Knitwear Company, Brooklyn, New York, while they were moving as and constituting an interstate shipment of freight from New York to New Jersey, the defendants SOLOMON BROVERMAN, WALLACE CASCIO and EUGENE SANTORE, also known as "Chatch" knowing them to have been stolen.

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendants SOLOMON BROVERMAN, WALLACE CASCIO, and EUGENE SANTORE, also known as "Chatch", committed among others the following overt acts:

One, on or about March 6, 1972, within the Eastern District of New York, the defendants EUGENE SANTORE, WALLACE CASCIO AND SOLOMON BROVERMAN, met in Queens, New York.

Two, on or about March 7, 1972, within the Eastern District of New York, the defendants SOLOMON BROVERMAN, WALLACE CASCIO and EUGENE SANTORE, also known as " Chatch", met in Brooklyn, New York.

Next, 371 of U.S. Title 18 of the United States Codes provides in pertinent part that

" If two or more persons conspire to commit any offense against the United States, and one or more such persons do any act to effect the object of the conspiracy, each"

Is guilty of an offense against the United States.

The following are the essential elements which are required to be proven beyond a reasonable doubt in order to establish the offense of conspiracy charged in the indictment:

One that there was an agreement or conspiracy between two or more persons to violate the law charged in the indictment;

Two that the conspiracy described in the indictment was willfully formed and existed at or about the time alleged;

Three that the conspiracy was so willfully formed and existing for the purpose of buying goods and merchandise which had been stolen from aboard the truck and which had been moving as or which were a part of or consituted an interstate or foreign shipment of freight, express or other property and had a value in excess of one hundred dollars or for the purpose of receiving or having in the possession of one or more of the conspirators the said goods and merchandise, the accused knowing the same to have been stolen;

Four that the accused willfully became a member of the conspiracy;

Five that one of the conspirators thereafter knowingly committed one of the overt acts charged in the indictment at or about the time and place alleged;

Six that such overt act was knowingly done in furtherance of the object of the conspiracy as charged;

Seven that the accused was knowingly and willfully a member of the conspiracy with intent to further one of its objectives.

If the jury should find beyond a reasonable doubt from the evidence in the case that existence of the conspiracy charged in the indictment has been proven, and that during the existence of the conspiracy one of the overt acts alleged was knowinly done by one or more of the conspirators and its furtherance of some object or purpose or conspiracy, then proof of the conspiracy offense charged is complete, and it is complete as to every person found by the jury to have been willfully members of the conspiracy at the time the overt act was committed.

A conspiracy is a combination of two or more

persons, by concerted actions, to accomplish some unlawful purpose. So, a conspiracy is a kind of " partnership in criminal purposes", in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to disobey, or to disregard, the law.

Mere similarity of conduct among the various persons, and the fact they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of existence of a conspiracy.

However, the evidence in the case need not show that the members entered into any express or formal agreement, or that they directly, by word spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished.

What the evidence in the case must show beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivance, positively or tacitly came into a mutual understanding to try to accomplish a common and

unlawful plan.

The evidence in the case need not establish that all persons charged to have been members of the alleged conspiracy were such. What the evidence in the case must establish beyond a reasonabld doubt is that the alleged conspiracy was knowingly formed and that one or more of the means or methods described in the indictment were agreed upon to be used, in an effort to effect or accomplish some object or purpose of the conspiracy, as charged in the indictment, and that two or more persons, including one or more of the accused were knowingly members of the conspiracy as charged in the indictment.

In your consideration of the evidence in the case as to the offense of conspiracy charge, you should first determine whether or not the conspiracy existed, as alleged in the indictment. If you conclude that the conspiracy did exist, you should next determine whether or not each of the accused willfully became a member of the conspiracy.

If it appears beyond a reasonabld doubt from the evidence in the case that the conspiracy alleged in the indictment was willfully formed, and that a defendant lawfully became a member of the conspiracy

either at the inception or afterwards, and that thereafter one or more of the conspirators committed one or more overt acts in furtherance of some object or purpose of the conspiracy, then there may be a conviction even though the conspirators may have not succeeded in accomplishing their common object or purpose and in fact may have failed so do[illegible].

The extent of any defendant's participation, moreover, is not determinative of his guilt or innocence. A defendant may be convicted as a conspirator even though he may have played only a minor part in the conspiracy.

An "overt act" is an act knowingly committed by one of the conspirators, in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature, if considered separately and apart from the conspiracy. It may be as innocent as the act of a man walking across the street, or driving an automobile, or using a telephone. It must, however, be an act which follows and tends towards accomplishment of the plan or scheme, it must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the indictment. It is

not necessary that all of the overt acts charged in the indictment were performed. One overt act is sufficient.

One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. On the other hand, a person who has knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Before the jury may find a defendant or any other person have become a member of the conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and that the defendant or other persons who are claimed to have been members, willfully participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.

To act or participate willfully means to act or participate voluntarily or intentionally and with specific intent to do something the law forbids... that is to say, to act or participate with bad purpose either to disobey or to disregard the law. So, if a defendant or any other person, with understanding of the unlawful character of the plan, know-

ingly encourages, advises or assists, all for the purpose of furthering the undertaking or scheme, he thereby becomes a willfull participant -- a conspirator.

One who willfully joins in an existing conspiracy is charged with the same responsibility as if he had been one of the originators, or instigators, of the conspiracy.

In determing whether a conspiracy existed, the jury should consider the actions and the declarations pf all the alleged participants. However, in determing whether a particular defendant was a member of a conspiracy, if any, the jury should consider only his acts and statements. He cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed, and that he was one of its members.

Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then the statements thereafter knowinly made and the acts knowingly done, by any person likewise found to be a member, may be considered by the jury as evidence in the case as to

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the defendant found to have been a member, even though the statements and acts made may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuancy of such conspiracy, and in furtherance of such object or purpose of the conspiracy.

Otherwise, any admission or incriminatory statement made or act done outside the court, by one person, may not be considered as evidence against any person who was not present and did not hear the statement made or see the act done. Therefore, statements of any conspirators which are not furtherance of the conspiracy or made before its existence or after its termination may be considered as evidence only against the persons making them.

The indictment charges a conspiracy among the defendants Solomon Broverman, Wallace Cascio and Eugene Santore, as well as a man who is not a defendant before you, Lawrence Caesar, all of whom are named in the indictment as co-conspirators. A person cannot conspire with himself and therefore you cannot find any of the defendants guilty unless you find beyond a reasonable

doubt that he participated in the conspiracy as charged with at least one other person. With this qualification you may find all of the defendants guilty or some of the defendants guilty, and some not guilty or all not guilty, all in accordance with these instructions and the facts that you find.

Now, I have used the words "knowingly and willfully" up to now during the course of the charge.

An act is done "knowingly" if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The purpose of adding the word " knowingly" was to insure that no one would be convicted for an act done because of a mistake, or accident, or other innocent reason.

An act is done "willfully" if done voluntarily and intentionally, and with the specific intent to do something that the law forbids that is to say, with bad purpose either to disobey or disregard the law.

Knowledge and intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operation of the

human mind. But you may infer a defendant's knowledge and intent from the surrounding circumstances. You may consider any statement made and done or omitted by a defendant, and all of the facts and circumstances in evidence which indicates his state of mind. It is ordinarily reasonable to infer that a person intends the natural and probable consequences of acts knowingly done and knowingly omitted.

Now, as I have said to you several times during the course of the trial, statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as proved.

The court may take judicial notice of certain facts or events. When the court declares it will take judicial notice of some fact or event, you may accept the court's declaration as evidence, and regard as proved the fact or event which has been judicially noticed, but you are not required to do so since you are the sole judges of facts.

Unless you are otherwise instructed, the

evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them, and all facts which may have been admitted or stipulated; and all facts and events which may have been judicially noticed; and all applicable presumptions stated in these instructions.

Any evidence as to which an objection was sustained by the court, and any evidence ordered stricken by the court, must be entirely disregarded.

Evidence does include, however, what is brought out from the witnesses on cross examination as well as what is testified to on direct examination.

Unless you are otherwise instructed, anything you may have heard or seen outside of the courtroom is not evidence and must be entirely disregarded.

You are to consider only the evidence in the case and your verdict is to be based on the evidence only. But in your consideration of the evidence, you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see or hear as the

witness testifies. You are permitted to draw, from the facts which you find have been proved, such reasonable inferences as you feel are justified in the light of experience.

Inferences are deductions or conclusions which reason or common sense lead the jury to draw from facts which have been established by the evidence in the case.

I think I have told you several times during the trial, and I will tell you now again, if a lawyer asks a witness a question which contains an assertion of fact, you may not consider the assertion as evidence of that fact. The lawyers' statements are not evidence.

Evidence relating to any statement, or act or omission, claimed to have been made or done by a defendant outside of court, and after a crime has been committed, should always be considered with caution and weighed with great care; and all such evidence should be disregarded entirely unless the evidence in the case convinces the jury beyond a reasonable doubt that the statement or act or omission was knowingly made or done.

A statement or act or omission is "knowingly" made or done, if done voluntarily and intentionally,

and not because of mistake or accident or other innocent reason.

In determining whether any statement or act or ommission claimed to have been made by a defendant outside of court, and after a crime has been committed, was knowingly made or done, the jury should consider the age, sex, training, education, occupation and physical and mental condition of the defendant, and his treatment while in custody or under interrogation, as shown by the evidence in the case; and also all other circumstances in evidence surrounding the making of the statement or act or ommission, including whether before the statement or act or ommission was made or done, the defendant knew or had been told and understood that he was not obligated or required to make or do the statement or act or ommission claimed to have been made or done by him; and that such statement or act or ommission which he might make or do could be used against him in court, that he is entitled to the assistance of counsel before making any statement, either oral or in writing, or before doing any act or ommission; and that he was without money or means to retain council of his own choice, an attorney would be appointed to advise to repre-

sent him free of cost or obligation.

If the evidence in the case does not convince beyond a reasonable doubt that an admission was made voluntarily and intentionally you shall disregard it entirely.

On the other hand, if the evidence in the case does show beyond a reasonabld doubt that an admission was in fact voluntarily and intentionally made by a defendant you may consider it as evidence in the case against the defendant who voluntarily and intentionally made the admission.

Admissions of the defendant, if you find any have been made, are amongst the most effectual proofs in the law, and constitute the strongest evidence against the party making it than can be given of the fact stated in the admissions. Accordingly you are entitled to give great weight to any defendant's admission in the case as against any defendant who made them.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all of the testimony given, the circumstances under which each witness has testified, and every matter in evidence

which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness' ability to observe the matter as to which he has testified and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection is not an uncommon occurence. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgement, you will

give the testimony of each witness such credibility, if any, as you may think it deserves.

An accomplice is one who unites with another person in the commission of a crime, voluntarily and with common intent. An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of an accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty even though not corroborated or supported by other evidence. However, the jury should keep in mind that such testimony is always to be received with great caution and weighed with great care.

You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that unsupported testimony beyond a reasonable doubt.

The law does not prohibit the use of an accomplice, but whether you approve of their use is not to enter into your consideration of this case. In certain types of crime the government, of necessity, is frequently compelled to rely upon the testimony of accomplices, persons with criminal records, or informers. Otherwise, it would be

difficult to detect or prosecute some wrongdoers, and this is particularly true in conspiracy cases. Often it has no choice in the matter. It must take the witnesses to the transaction as they are.

It is the universal rule in the federal Courts that defendants may be convicted on testimony of an accomplice standing alone if you believe such testimony beyond a reasonable doubt. This would still be so even though the accomplice was a confirmed criminal.

There are several other persons whose names you have heard during the course of this trial and one or more of the attorneys have referred to their absence from this trial. Neither of the defendants, nor the government may benefit from the absence of such witnesses or impossible witnesses because each side has an equal opportunity, or lack of opportunity to have them testify. If either side had wanted any of them here, so far as the record shows, they had equal opportunity to get them and absence should not affect your judgement in passing on this case or in determining the guilt or innocence of the defendants.

Bear in mind, of course, that the law never imposes upon the defendant in a criminal case

the burden of producing or calling any witnesses or producing any evidence.

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of the statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars, and you may reject all of the testimony of that witness or give it such credibility as you may think it deserves.

A defendant who wishes to testify, however, is a competent witness; and the defendant's testimony is to be judged in the same way as that of any other witness.

The law permits a defendant, at his own request to testify on his own behalf. The testimony of an individual defendant is before you. You must determine how far it is credible. The deep

personal interest which every defendant has in the result of his case should be considered in determining the credibility of his testimony. You are instructed that interest creates a motive for false testimony; that the greater the interest the stronger is the temptation, and that the interest of a defendant is of a character possessed by no other witness and is, therefore, a matter which may seriously affect the credence that should be given to his testimony.

The law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn, from the failure of a defendant to testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

It is the duty of the attorney on each side of the case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissable. You should not show prejuidice against an attorney or his client because the attorney has made

objections.

Upon allowing testimony or other evidence to be introduced over the objection of an attorney, the court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence. As stated before, the jurors are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When the court has sustained an objection to a question addressed to the witness the jury must disregard the question entirely, and may draw no inference from the wording of it, or speculate as to what the witness would have said if he had been permitted to answer any question.

The fact that the court has asked one or more questions of a witness for clarification or admissibility of evidence purpose is not to be taken by you in any way as indicating that the court has any opinion as to the guilt or innocence of the defendants in this case, and you are to draw no such inferences therefrom. That determination is up to you and you alone based on all of the facts in the case and the applicable law in these instructions.

You are here to determine the guilt or

innocence of the accused from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused, you should so find even though you may believe one or more other persons are guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in this case, it is your duty to find the accused not guilty.

The verdict must represent the considered judgement of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself but do so only after an impartial consideration of all the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your

honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case, from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence in the case for only those purposes for which it has been admitted and give it a reasonable and fair consideration, in light of your common knowledge of the natural tendencies and inclinations of human beings.

If the accused be guilty beyond a reasonable doubt say so. If not so proved guilty, say so. You must render a verdict with respect to each of the three individual defendants as to each of the two Counts of the indictment that I have described to you.

If any reference of the court or by counsel

to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the court, and should never be considered by jury in any way, in arriving at an impartial verdict as to the guilt or innocence of the accused.

Now, upon retiring to the jury room, juror number one, the young lady sitting closest to the court in the print dress will act as your forelady unless she chooses not to do so, in any event you will elect a foreman or a forelady amongst your number to preside over your deliberations, and will be your spokesman here in court.

If it becomes necessary during your deliberations to communicate with the court, you may send a note by the marshall, signed by your forelady, or one or more members of the jury. No member of the jury shall ever attempt to communicate with the court by any means other than a signed writing, and the court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or

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orally here in open court.

You will note from the oath about to be taken by the bailiffs that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Now, bear in mind that you are never to reveal to any person -- not even to the court -- how the jury stands, numerically or otherwise on the question of the guilt or innocence of the accused, until after you have reached a unanimous verdict.

If, as and when you have reached a unanimous verdict you will write me a note saying -- don't write in the note what the verdict is. Just state that you have reached a verdict. And when called in open court at that time you will state what the verdict is.

You are not to write me a note stating how you stand numerically or otherwise. If you so state that in a note or here in open court before you have reached a unanimous verdict it may be necessary to declare a mistrial and go through the expense of another trial. Don't do that. One jury did that. But don't you do it.

Take a five minutes recess, all of you including the alternates will go into the next room and wait until I have discussed certain legal matters with counsel, at the conclusion of which I will ask you to return and the alternates will be dismissed, and then you may begin your deliberation and not until then. Do not discuss the case until then.

(Thereupon, the jury left the courtroom).

MR. LEVIN-EPSTEIN: The charge is satisfactory to the government, Your Honor.

THE COURT: Mr. Lombardo.

MR. LOMBARDO: Your Honor, the defendants object to Your Honor's charge substantially with the words that the defendants have equal power of subpoena and may subpoena witnesses. I say that because the witness to which I referred has not been called by the goverment, or by the people, was a government witness-- actually a government agent. And I think perhaps I am aware what Your Honor says subsequently, namely that the burden of proof is on the prosecution at all times. But I think the earlier charge ,
might cause confusion in the jurors' minds.

THE COURT: Any reason why you couldn't

have subponead the witness?

MR. LEVIN-EPSTEIN: I don't think counsel's statement is a valid statement, because the defense could have subponead the witness and all the other witnesses are in jail.

MR. LOMBARDO: Well, I wasn't concerned with that aspect, the ones in jail. I made no issue of that.

THE COURT: You did not, but Mr. Passalacqua did.

MR. LOMBARDO: But I take exception as it applies to my client. That is the only exception that I would have. I would ask Your Honor in conjunction with that exception that Your Honor charge the jury along the lines that I have indicated in my exception.

THE COURT: No.

MR. LOMBARDO: I respectfully take exception, Your Honor.

THE COURT: Mr. Murphy?

MR. MURPHY: First of all, I have good news. I have no objection to the failure of the witnesses to take the stand as charged by the court as presented in the context of the charge. I thought it was fair. I do object as to the

testimony of the charge didn't charge as to the interest of an accomplice. You didn't put in the charge the interest on the part of the defendant not to take the stand.

THE COURT: I don't think the interest of an accomplice need to have been expressly charged. I did put in the general charge, but I didn't include the general interest charge. I did it with respect to the general charge in considering each witness' outcome of the case.

MR. MURPHY: Well, I make the objection as to the failure to make that remark with respect to my client.

THE COURT: With respect to the accomplice, I don't intend to amplify that.

MR. MURPHY: You also stated that reasonable doubt might rise from the lack of evidence as well as presented evidence.

THE COURT: Well, I think that is implicit. I talked about the lack of evidence at one point, I think it was in connection with one of the requests that the government asked to find him guilty on the evidence, or the lack of evidence. I think I covered that.

MR. PASSALACQUA: I have no exception to the

court's charge.

THE COURT: Have you finished, Mr. Murphy?

MR. MURPHY: Yes, I have finished, Your Honor.

THE COURT: And you have --

MR. PASSALACQUA: I have no exceptions.

THE COURT: Well, I am going to tell them that you are going to lunch between now and 2:15 and to hold their questions until after that.

Bring in the jury.

(Whereupon the jury was brought back into the courtroom).

THE COURT: Alternate jurors, your time has come, and as I say I don't know whether you have ordered lunch or not, but if you did order you may go through that door closest to me here (indicating), and walk across the hall and wait until lunch, and then you may go downstairs and check out for your jury services for today. Make sure that they have you recorded for yesterday. I am sure they have, but make sure. I think your term is finished and you go with the thanks of the court. I thank you for patience in listening to the case, but on the other hand, you don't have the problem of wrestling with a verdict and how

long it will take. If any of you have anything in the jury room would you go and get it out.

Marshalls, would you step forward, please.

(Whereupon the marshalls are duly sworn in by the Clerk).

THE COURT: Now, ladies and gentlemen, I am going to let the attorneys go to lunch between now and roughly 2:15. So if you start conjuring up any questions I want to ask you to hold them until that time, then you may send me a note at 2:15. Of course, you may begin your deliberations as soon as you have retired, and you may continue to deliberate while you are eating lunch, but that is up to you. So, from this point on, you are on your own. You may discuss the case.

(Whereupon the jury left the jury room).

THE COURT: Gentlemen, if anyone or more exhibits are asked for, you would normally want to be present when they are asked for, but if you want to waive that right, in other words, if they ask for A, B, or C, or any statement or statements I would normally require that you be present when they make that request before giving it. If you want to waive that right, it is up to you, and you will let me know.

MR. LOMBARDO: I will leave it up to Your Honor.

MR. PASSALACQUA: I will leave it up to Your Honor.

MR. MURPHY: I will leave it up to Your Honor.

THE COURT: Of course, any question for anything specific, if there is anything ambigious about the request, do you want to leave it to my discretion?

MR. MURPHY: Definitely.

THE COURT: Mr. Levin-Epstein, do you want to leave it to my discretion their request for any exhibits?

MR. LEVIN-EPSTEIN: Requests for physical exhibits, yes, of course.

THE COURT: All right.

Time Noted: 1:30 P.M.

* * *

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AFTERNOON SESSION

(Time noted: 2:50 p.m.)

THE COURT: Well gentlemen, they would like the definition of knowledge as pertaining to this case and then, would like to have the signed statement of Mr. Broverman and the two consent slips to the search, according to this note.

I assume they want the various instructions on the question of knowledge.

There are several portions that pertain to knowledge beginning with the possession of recently stolen property portion and then I gave them several other portions that pertain to knowledge and as I recall I read the Government's request No.18 and I then gave them two general definitions of knowledge, knowing and willful and knowledge and intent.

MR. MURPHY: Your Honor, if you are going to have the recent possession of stolen property I would ask that the mere presence charge submitted by the defense also bears on knowledge.

THE COURT: I will give that.

MR. LEVIN-EPSTEIN: Here are Government Exhibits 3, 7 and 14, all in evidence; Government Exhibit 3 being the consent to search form executed and signed on June 28, 1974; Government Exhibit 7 being the consent

to search, July 19, 1974 by Mr. Broverman and of course, Government Exhibit 14 which is the signed statement. Shall I give this to the deputy clerk or marshal?

THE COURT: Give it to Mr. Dunseith.

THE CLERK: Court Exhibit 1, one jurors' note.

(So marked.)

(Jury entered jury box.)

THE COURT: Now, I have your request, ladies and gentlemen, and I think I have isolated the portions of the charge pertaining to knowledge and I will re-read them to you.

If after hearing them you feel there is something else you wish to have re-read to you on this question, of course I will be glad to do so.

I have also separated the exhibits which we will send with you when you retire again.

Now, right after defining possession I started on the question of knowledge as follows:

Possession of property recently stolen, if not satisfactorily explained, is ordinarily a circumstance from which the jury may reasonably, but it is not required to draw and find, in the light of surrounding circumstances, shown by the evidence in the case, that the person in possession knew the property had been stolen.

Ordinarily, the same inferences may reasonably be drawn from a false explanation of possession of recently stolen property.

The term "recently" is a relative term, and has no fixed meaning. Whether the property may be considered as recently stolen depends upon the nature of the property, and all the facts and circumstances shown by the evidence in the case.

In considering whether possession of recently stolen property has been satisfactorily explained, you are reminded that, in the exercise of Constitutional rights, the accused need not take the witness stand and testify.

There may be opportunities to explain possession by showing other facts and circumstances, independent of the testimony of the defendant.

You will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

It is the exclusive province of the jury to determine whether the facts and circumstances shown by the evidence in the case warrant any inference which the law permits you to draw from possession of stolen property.

If you find beyond a reasonable doubt from the evidence in the case that the merchandise described in the indictment was stolen from goods or chattels which constituted interstate commerce and that recently stolen property was in the possession of the accused, you may, but need not, from these facts, draw the inference that the merchandise was purchased, received or in the possession of the accused, as the case may be, with the knowledge that the merchandise was unlawfully stolen unless possession of the recently stolen property by the accused is explained to the satisfaction of the jury by other facts and evidence in the case.

Again, it is the exclusive province of the jury to determine whether the facts and circumstances shown by the evidence in the case warrant any inference which the law permits you to draw from possession of recently stolen property.

One of the elements of the crime charged in each count of the indictment is that the defendant knew that the merchandise he possessed was unlawfully stolen. As I have already instructed you, that must be proven beyond a reasonable doubt.

Knowledge is something that you cannot see with the eye or touch with the finger. It is seldom

possible to prove it by direct evidence. The Government relies largely upon circumstantial evidence in this case to establish knowledge.

In deciding whether the accused knew the merchandise was stolen, you should consider all the circumstances such as how the accused handled the transaction, how he or they conducted himself or themselves. Do his or their actions betray guilty knowledge that he or they were dealing with stolen merchandise, or are his or their actions those of an innocent man or men.

Guilty knowledge cannot be established by demonstrating merely negligence or even foolishness on the part of the accused.

Knowledge that the goods may be stolen may be inferred from the circumstances that would confince a man of ordinary intelligence that this is the fact. The element of knowledge may be satisfied by proof that an accused deliberately closed his eyes to what otherwise would have been obvious to him.

Thus, if you find that the accused acted with reckless disregard of whether the merchandise was stolen, and with a conscious purpose to avoid learning the truth, the requirements of knowledge would be satisfied unless the accused actually believed they

were not stolen.

In this connection you should scrutinize the entire conduct of the accused at or near the time the offenses were alleged to have been committed.

If the evidence in this case indicates that a defendant has conspired with persons engaged in crime or aids and abets them in their plans and purposes, an inference of guilty knowledge can be drawn.

The law assumes every man to intend the natural consequences which one standing in his circumstances and possessing his knowledge would reasonably expect to result from his acts.

Now, bear in mind, in connection with this general subject -- I also instructed you more specifically in the aiding and abetting definition in connection with that -- but in connection with this general subject, bear in mind that mere presence at the scene of a crime and knowledge the crime is being committed is not sufficient to establish that the defendant aided and abetted the crime unless you find beyond a reasonable doubt that the defendant was a participant and not a spectator.

Guilt may not be inferred from mere association with a guilty party.

Generally, on the question of knowledge, I also